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| **Direction Decision** |
| **by A Behn Dip MS MIPROW** |
| **an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 5 July 2023** |

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| **Ref: ROW/3310285, ROW/3310286 & ROW/3310287****Representation by South Somerset Bridleways Association****Somerset Council****Application to upgrade to a bridleway, the footpath which runs from Sticklepath to Chilworthy (ROW/3310285, 673M)****Application to upgrade to a restricted byway, the footpath which runs from Chilworthy to Greenway Lane (ROW/3310286, 674M)****Application to upgrade to a restricted byway, the footpath which runs from Chilworthy to Bell Lane (ROW/3310287, 675M)** |
| * The representations are made under Paragraph 3(2) of Schedule 14 of the Wildlife and Countryside Act 1981 (the 1981 Act) seeking a direction to be given to Somerset Council (the Council) to determine applications for Orders, under Section 53(5) of that Act.
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| * The representations are made by South Somerset Bridleways Association (SSBA) and are dated 1 November 2022.
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| * The certificates under Paragraph 2(3) of Schedule 14 in relation to ROW/3310285, ROW/3310286 and ROW/3310287 are dated 17 February 2011.
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| * The Council was consulted about the representations on 22 November 2022 and the Council’s response was made on 21 December 2022.
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Decision

1. The Council is directed to determine the above-mentioned applications.

Reasons

1. Authorities are required to investigate applications as soon as reasonably practicable and, after consulting the relevant district and parish councils, decide whether to make an order on the basis of the evidence discovered. Applicants have the right to ask the Secretary of State to direct a surveying authority to reach a decision on an application if no decision has been reached within twelve months of the authority’s receipt of certification that the applicant has served notice of the application on affected landowners and occupiers.
2. Current guidance contained within the Rights of Way Circular 1/09 Version 2, October 2009 and published by the Department for Environment, Food and Rural Affairs details the following: The Secretary of State in considering whether, in response to such a request, to direct an authority to determine an application for an order within a specified period, will take into account any statement made by the authority setting out its priorities for bringing and keeping the definitive map up to date, the reasonableness of such priorities, any actions already taken by the authority or expressed intentions of further action on the application in question, the circumstances of the case and any views expressed by the applicant.
3. Under the Council’s former statement of priorities, any applications received prior to 2008, were investigated in chronological order of receipt. However applications received from 2008 until 28 November 2011 were assessed against criteria set out on a scorecard. The resulting scores were then used to rank each application and produce a prioritised list. A new statement of priorities was introduced in 2018 whereby applications received after 28 November 2011 reverted to being investigated in chronological order, with those received between 2008 and 28 November 2011 remaining in the order they were placed under the scorecard system.
4. The Council advised that applications can be investigated out of order in certain circumstances: where the path is subject to a Small Improvement Scheme or affected by a Future Transport Plan; where claimed rights are likely to be obstructed through development; where an application severely impacts property and is supported by the local Councillor or Regulation Committee; where the path is subject to a Section 130A notice and the status of the path or alignment is in dispute, with resolution enabling the Council to respond with more certainty to the notice; where a direction is given under paragraph 3(2) of Schedule 14 by the Secretary of State; where batching applications makes best use of resources.
5. The applications from SSBA for ROW/3310285, 3310286 & 3310287 were submitted in March 2010. It is understood that the Council is unable to give an accurate timescale as to when these cases will be investigated but has estimated a timeframe of approximately 5 years.
6. SSBA are concerned that when they first submitted the applications, they were advised that they would be processed in chronological order, however the Council later changed its policy and ‘scored applications,’ moving the applications further back in the queue and in the opinion of SSBA, effectively disadvantaging them. The Council have advised SSBA that there are approximately 150 applications to be determined before their upgrade applications are considered and SSBA feel that nearly all of these applications were submitted later than theirs. However, the Council advise that nearly two thirds of the applications were submitted earlier and those that were not, either scored higher under the assessment criteria, or have been taken out of turn due to exceptional circumstances, or as a result of a Direction to determine.
7. SSBA stated that local riders and carriage drivers are keen to have the routes investigated, as they would provide off-road riding routes in an area where there is very little safe riding. The Council acknowledges this but asserts that that the arguments for determining ROW/3310285, 3310286 & 3310287 out of turn could apply to many other similar cases, and the available resources would make it unfeasible to deal with all those that deserve the same priority.
8. The Council recognises that it has a significant backlog of cases awaiting determination but submits that this is due to an exceptionally high number of cases having been received since 2010. They also submit that their rate of determination of cases is comparable to other surveying authorities with a rights of way network of a similar size. Subsequently they feel that they are making reasonable progress in keeping their Definitive Map and Statement under review.
9. I accept that there are a large number of applications awaiting determination and that the Council has a Statement of Priorities to ensure fair ranking. I also recognise that the resources allocated to this area of work has not kept pace with the receipt of applications and has pushed the Council into a difficult position, gradually accumulating an increasing number of cases to be taken out of turn as a result of being directed to determine them, leaving other cases to fall even further behind the statutory timetable that is anticipated. I also accept that the Council has answered the points raised by SSBA with a reasonable defence.
10. Nevertheless, an applicant’s right to seek a Direction from the Secretary of State gives rise to the expectation of a determination of that application within 12 months under normal circumstances. In this case, more than 12 years have passed since all of the applications were submitted and no exceptional circumstances have been indicated. The prospective wait of a further 5 years is well beyond the expectation of determination under the legislation, and the applicant is entitled to expect their applications to be determined within a finite and reasonable period. The Council have a statutory duty to keep their Definitive Map and Statement up to date and although I appreciate the circumstances the Council find themselves in, difficulty complying with this due to unavailable resource and a backlog are not exceptional circumstances, as proportionate resources should be in place to deliver this statutory duty.
11. Correspondingly, I have decided that there is a case for setting a date by which time the applications should be determined. However, I accept that the Council will require time to carry out its investigations and make a decision on the applications and I appreciate the cumulative effect of directing them to determine multiple applications for which they do not have available resources. Taking this into consideration, a further period of 18 months has been allowed.

**Direction**

On behalf of the Secretary of State for Environment, Food and Rural Affairs and pursuant to Paragraph 3(2) of Schedule 14 of the Wildlife and Countryside Act 1981, **I HEREBY** **DIRECT** Somerset Council to determine the above-mentioned applications not later than 18 months from the date of this decision.

A Behn

INSPECTOR